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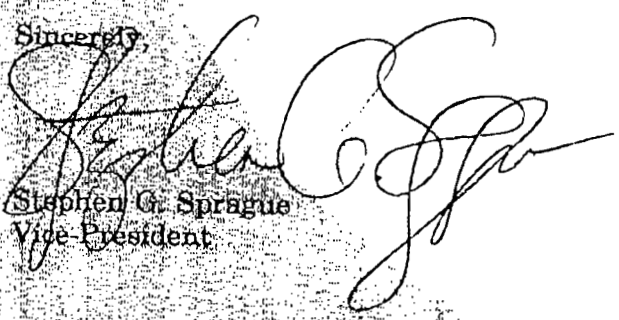
May 18, 1996

Comments from the **United Motorcoach Association**
Re: FHWA Docket No. MC-96-6
"Safety Performance History of New Drivers"

Please accept the enclosed comments in response to Docket No. MC-96-6 on behalf of the United Motorcoach Association.

Thank you for your assistance.

Sincerely,



Stephen G. Sprague
Vice-President

DOCKET MC-96-6-26
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Comments from the **United Motorcoach Association**
Re: FHWA Docket No. MC-96-6
"Safety Performance History of New Drivers"

The United Motorcoach Association (UMA), formerly known as the United Bus Owners of America, wishes to go on record in very strong support of the concept behind this proposed rulemaking. UMA's more than 800 operating company members consider the task of review of complete driver safety records to be absolutely essential to effectively meet the motor carrier's goals of passenger safety. Though we'll forego the recounting of anecdotal substantiation for this change, we can say with confidence that dozens of tragic stories exist to support the need for revision. We will, instead, concentrate here on the specific points of the NPRM and our responses and suggestions.

First and foremost, UMA believes that employers of commercial drivers bear a very grave responsibility to place on the road only the most skilled, conscientious and safety-minded drivers. We wish to go on record in support of the collection and dissemination of any and all pertinent information which would help employers to select good drivers from the eligible candidates and to weed bad drivers not only out of specific job candidacy, but out of the commercial motor carrier industry altogether. For too many years, previous employers have demonstrated an unwillingness to share negative information about former employees, not because of a lack of regard for safety but specifically because of a fear of driver legal retribution.

UMA believes that although this NPRM addresses the need to share information, it provides virtually no guidance on the ways in which collected information should be used. We believe that, at a minimum, commercial driver employers should consider the elements of safety and

responsibility which are transmitted in a factual previous service report about a driver, well before that potential employer is faced with the urgency of filling a specific position or with the unique personalities encountered during the interviewing and screening process. Toward that end, we urge that the FHWA suggest, if not require within this rule, the establishment of a company policy at all motor carriers addressing new driver qualifications and that company's acceptable past performance levels. Such a policy may serve as a reminder of the need to carefully review and apply reasonable standards of safety performance when hiring a new driver. Coupled with the mandatory response requirement of this rule, FHWA may wish to create a prototype policy to share with motor carriers which sets a standard for weighing individual performance areas of a driver's past record.

The NPRM directs that four aspects of a driver's record be addressed in a previous employer's report:

- *a) a driver's accident record,*
- *b) hours-of-service violations resulting in an out-of-service order,*
- *c) violations of the prohibitions in subpart B of part 382, and*
- *d) failure to undertake or complete a rehabilitation program recommended by a substance abuse professional (SAP) under Sec. 382.605.*

UMA believes that some of these criteria are inappropriate which some are of critical value. To address these in order:

- *a) a driver's accident record*

UMA strongly supports the inclusion of any information relating to a driver's accident record as long as that record addresses only those accidents meet the definition within §390.5 and in which the driver was found guilty of a violation of state, federal or local statute; is

pending prosecution for such a violation or was found to be responsible for the accident in a civil action or is pending the outcome of an action on the question of the accident's avoidability. The definition of a reportable accident within §390.5 ignores the placement of responsibility for the a catenate. The fact that a driver was, himself, a victim of another person's bad driving or circumstances beyond his control should not be grounds for an entry which reflects or casts suspicion on that driver. If all "reportable" (under §390.5) accidents must be reported in satisfaction of this rule, we believe that such reports must also include a notation which specifically declares that a driver was or was not cited as a result of the accident.

- *c) violations of the prohibitions in subpart B of part 382,*

Because of the significant and potentially tragic effects of drug and alcohol use by commercial motor vehicle drivers, UMA is in full agreement that any violation of Part 382 must be made an element of the driver's record transmitted in satisfaction of this rule.

- *b) hours-of-service violations resulting in an out-of-service order*

UMA does not share the NPRM's view of this violation. We believe that today's hours-of-service regulations are far too complex and, in many cases, unrelated to "real world" circumstances for violations to be made part of a driver's long-term record. Similarly, many hours-of-service violations are a direct result of an employee's attempt to follow the direct or implied orders of the employer. A driver should not be held liable for an employer's failure to realistically schedule work. As a matter of fact, UMA believes that less-than-scrupulous employers might find a high incidence of hours-of-service violations *desirable* in a new driver, believing that a driver who ignores the rules could be an attribute to the company.

In very rare circumstances, motorcoach drivers will be enticed by and even paid by chartering parties to knowingly and willfully extend his or her driving hours beyond legal limits so that the party may reach an alternate destination. Though UMA believes that such action should be a violation of company policy and should be punished, these instances are so infrequent that they cannot realistically be used as grounds to make an exception in this regulation. As a practical, logistical matter, this provision would also cause employer records to bulge at the seams with the requirement that three years' worth of logs be maintained rather than the current six-months record. We urge that this criteria be dropped from the rule.

- d) failure to undertake or complete a rehabilitation program recommended by a substance abuse professional (SAP) under Sec. 382.605.

Though UMA agrees with the transmittal of violations under Part 382, we cannot agree with the NPRM's provision d) on the reportability of a driver's failure to follow through on a drug or alcohol rehabilitation program. We believe this provision represents an inappropriate extension of an employer's responsibility under Part 382.

Part 382.605(d) clearly states that an employer "may" provide evaluation and rehabilitation to a driver found to be in violation of Part 382. It does not require that such services be provided by an employer. If an employer instead chooses to terminate an employee based on the verified results of a drug or alcohol test, or if an employee resigns following such an event, that employer should bear no responsibility for either monitoring or reporting the employee's follow-up. We urge that this provision be removed from the proposed rule.

UMA is concerned that the NPRM makes no mention of the need to

include in a driver's record a list of all citations and findings of guilt for moving violations incurred by the driver. While these should be echoed within the candidate's state drivers license abstract to be obtained in addition but unrelated to this report, UMA believes that a driver's moving violations may contribute significantly to a previous employer's overall impression of the driver and his assessment of the driver's attitude toward safety. As an aside, the addition of moving violations within a previous employer's report provides the ideal opportunity to compare that record with the driver's licensing abstract to ensure that the driver has been forthright with his employer about reporting moving violations.

UMA is also interested in the mechanics and logistics of the driver's "right to review" his record. We believe that a driver should have the right to review his "driver's record" within an employer's files at any time which is reasonable and convenient to both parties throughout the work year. We also believe that, at a minimum, the driver should be invited by the employer to review that record each year on the anniversary of his or her date of employment and, of course, on exit from a company's employ. We would support a provision within this rule which would require that an employer complete the needed "previous employment" record within 48-hours of the termination of an employee unless both employer and employee agree to an extension of that time or unless the employer is hindered by extenuating circumstances, justifiable directly to FHWA representatives. Though this seems to be a very brief time, we anticipate that previous employment reports will be very much of a straightforward statement of facts which will not require extraordinary periods for creation. Similarly, inordinate delays in the completion of such a report could hinder or delay a driver's opportunity to secure a

new position.

Here, again, is an ideal place for the use of a company policy guide which, by establishing clear policy directions for both employer and employee, eliminates much of the chance for rancor at the employee's time of departure.

UMA believes that drivers should be granted the right to add personal, enlightening comments to a previous employer's report of their performance. Such responsive comments must, of course, be done within reasonable limits; we suggest that no more than one, single-spaced typewritten page should be sufficient. Such comments should, by mandate, accompany all inquiries sent to a potential employer by a previous employer.

While there is substantial value in this proposed rule's concept of shared information about a driver and mandated departure reports by former employers, UMA continues to believe that any information short of a forthright and complete report of a driver's performance will deliver less than the expected results.

UMA has long advocated the addition of a regulatory provision which would "hold harmless" a former employer who shared full information about a driver's safety performance. Information such as an assessment of a driver's attitude, attention to rules and regulations, and an overall review of the driver's adherence to authority and the directions of an employer can be critical to a new potential employer. Sadly, however, these are considered subjective judgements and open to legal challenge. The specter of such a challenge often prevents critical previous employer observations from being passed on.

Lacking a previous employer's legal immunity from prosecution for statements made about a former employee, UMA urges that this rule be

fashioned to accomplish as much of that information-sharing as is possible using a standard information form. UMA suggests the creation of a simple check box form which could be completed by a previous employer and shared with a potential employer, alongside the driver's record of violations.

We might suggest the following questions for demonstration of concept only:

- * Driver's full Name:
- * CDL Number, State of Issue, Expiration Date
- * Social Security Number

1. Terms of driver's departure:
 - a) Terminated by employer
 - b) Resignation by driver.
2. How many reportable and/or chargeable accidents has this driver experienced within the past three years? _____
3. How many moving violations has this driver received in the past three years?
4. Has this driver tested (confirmed) positive for alcohol or drug use during the past three years?
 - a) Yes
 - b) No
5. If your answer to question 4 was "Yes," do you have evidence of this driver's completion of a substance rehabilitation program?
6. Has this report been reviewed with the driver in question? Please list date of such a review? _____ Date? Initialed by driver?
-- End of prototype questions --

Though UMA would prefer to include far many more questions in this

kind of exit survey for drivers, we hesitate because of the very subjective judgements which additional, desirable questions would add to any worthy summary of a driver's performance.

Today more than ever, UMA believes that a commercial motor vehicle operator is -- and should be -- subject to close public and peer scrutiny on the subject of driving safety. Tragic tales of "bad" drivers who simply shop their services to uncaring or uninformed motor carrier companies continue to surface.

Both the motor carrier industry and the government need to team together to end abuses of commercial driving privilege. The technology now exists to identify habitually unsafe commercial drivers. At the same time, the desire exists to keep these drivers from continually abusing that privilege to the harm of others.

UMA urges that all pertinent safety information about a commercial driver be made available to potential employers without fear of spurious legal recourse. We urge enhancement and approval of this rule.

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